the rest of his evidence, was insufficient to negate negligence on his part.

In our judgment the evidence at the trial plainly disclosed that the deceased was killed in the course of an operation jointly carried on by the servants of both defendants. Ali and the crane driver both said they did not know why the timber slipped from the sling or slings. It follows that neither of them gave an explanation as to the cause of the accident. We agree with the trial judge's finding that the accident was undoubtedly due to negligence on the part of Ali and the crane driver or of either of them. On the findings of the trial judge the plaintiffs would have been entitled to succeed against Ali and the crane driver as joint tortfeasors and to have judgment against both defendants who are vicariously liable for the negligence of their servants. As neither Ali nor the crane driver has given a reasonable explanation as to the cause of the accident which negates negligence on his part or has shown that there was no negligence on his part we are of the opinion that the trial judge was entitled to hold both defendants equally responsible in law for the accident.

In the result the appeal of the first defendants is dismissed and the cross-appeal by way of Notice of the second defendants to reverse the judgment against them is also dismissed.

Appeal and cross-appeal dismissed.

Solicitors: *Battenberg & Talma; J. B. Jeyaretnam & Co.; A. S. K. Wee.*

SOMASUNDARAM & ANOR. v. TONG NAM CONTRACTORS (PTE) LTD.

[A.C.J. (Winslow J.) July 17, 1975]
[Singapore — District Court of Appeal No. 16 of 1974]

Landlord and Tenant — Controlled premises — Claim for possession by owners — Tenants claiming protection as statutory tenants — Appeal against trial District Judge's decision — Whether there was a statutory tenancy — Control of Rent Act, (Cap. 266), ss. 27(a) & 28.

Landlord and Tenant — Statutory tenancy — Tenants parted with possession of premises — Whether they could claim protection as statutory tenants — Control of Rent Act. (Cap. 266), ss. 27(a) & 28.

The respondents as owners claimed for possession of their premises at No. 67, Bukit Timah Road. The first appellant alleged that he carried on business known as "Nathan Brothers" at the said premises in partnership with the second appellant and claimed that they were statutory tenants. The learned trial District Judge held that since 1966 the firm of Nathan Brothers was not in fact operating at all. It was a fictitious firm and the firm's name had obviously been retained and registered by the appellants as a means to enable the second appellant to block any attempt by the respondents to recover possession of the premises. The learned trial District Judge, accordingly, held that the first appellant was in unlawful occupation of the said premises. The second appellant was held to have completely abandoned the statutory tenancy which he possessed from 1958 onwards by failing to remain in possession of the premises with the necessary "animus" long before the present proceedings were instituted.

The appellants appealed against the aforesaid judgment.

Held, dismissing the appeal: (1) the appellate court did not have the advantage which the trial District Judge had of seeing, hearing and thereby being better able to assess the credibility of witnesses;

(2) there was nothing in the record of evidence which showed that the learned trial District Judge did not have overwhelming material on which he could properly arrive at the decision which he reached on facts;

(3) the second appellant parted with possession of the premises in 1966 and was not a statutory tenant by reason of section 27(a) of the Control of Rent Act.

[Editorial Note: The appellants appealed to the Court of Appeal (Civil Appeal No. 22 of 1975, Wee Chong Jin C.J., Chua and Tan Ah Tah JJ., September 9, 1975). Upon reading the record of appeal and upon hearing counsel it was ordered that the appeal be dismissed with costs.]

Cases referred to:-

(1) *Tan Khio Soei & Anor.* v. *Ban Hin Lee Bank Ltd.* [1964] M.L.J. 71.

(2) *Ramasamy Pillai* v. *Meyappa Chettiar* [1955] M.L.J. 105, 106.

(3) *Keeves* v. *Dean* [1924] 1 K.B. 690.

(4) *United India Fire & General Insurance Co. Ltd.* v. *Jaffnese Co-operative Society Ltd.* [1971] 1 M.L.J. 118.

DISTRICT COURT APPEAL.

Karuppan Chettiar (*T. G. Dunbar* with him) for the appellants.

Kirpal Singh for the respondents.

Winslow J.: The first appellant who claimed to be conducting a business known as "Nathan Brothers" at No. 67 Bukit Timah Road in partnership with the second appellant, was, after a careful analysis of the evidence and consideration of the pertinent authorities, held by the trial District Judge to be in unlawful occupation of the said premises which are owned by the respondents/landlords. The second appellant, after similar considerations, was held to have completely abandoned the statutory tenancy which he possessed from 1958 onwards by failing to remain in possession of the premises with the necessary "animus" long before the present proceedings were instituted in 1972 for recovery of possession thereof from them both. It is not surprising that such a decision was reached when one considers the facts and the near-startling "ploys" adopted to substantiate possession on the part of the statutory tenant as revealed by the evidence.

An appellate court does not of course have the advantage which the trial District Judge had of seeing, hearing and thereby being better able to assess the credibility of witnesses. There was, however, nothing in the record of evidence which caused me any apprehension that he did not have overwhelming material on which he could properly arrive at the decision which he reached on the facts. If ever there were facts in a case of this kind which pointed almost inexorably — and not merely by a preponderance of evidence — to one conclusion only, this was such a case.

The evidence of PW2, a Director of the respondents, was accepted by the District Judge without any reservations. She told a simple, straightforward story contrasted with which the appellants' versions paled into insignificance and were rightly treated with the near-derision which they deserved as revealed by the following penetrating analysis of the factors militating against them: —

(a) The signboard of their alleged business known as Nathan Brothers was significantly never exhibited outside the premises after 1958 although those of several other businesses including one, of which the first appellant was sole proprietor, "Liberty Stores" were so exhibited. Shortly after the issue of the Writ, however, all these signboards disappeared and the signboard of "Nathan Brothers" reappeared outside the premises. PW2 had her office only a few doors away and was able to observe these matters over a long period of time.

(b) No income tax was paid between 1966 to 1973 as the business was said by the first appellant to be operating at a loss since 1966.

(c) The firm's bank account with the Eastern Bank was closed around 1962 and till about October 1973 the firm had no bank account in its name.

(d) Strangely, an account was opened with the Overseas Chinese Banking Corporation after the Writ was taken out.

(e) The firm ceased to have a telephone from 1967 until August 1973 when an application was made to transfer one under the name of another business back into the firm's name.

(f) The second appellant could give no satisfactory answers as to the earnings of the firm and "appeared to be totally oblivious of its actual operations *i.e.* if there were any at all."

The District Judge accordingly came to the conclusion that "since 1966 or thereabouts the firm of Nathan Brothers, although registered as a 'business' with the Registry of Business Names, was not in fact operating at all and had ceased its purported business operations altogether. It was a fictitious firm and the firm-name had obviously been retained and registered by the defendants as a means to enable the second defendant, at least, to block any attempt by the plaintiffs to recover possession of the premises in question, when in actual fact the first defendant was carrying on his own business there under the style of 'Liberty Stores'."

Before finalising his judgment he also took note of the following matters: —

(a) that PW2 was kept in ignorance of changes in the partnership over the years and of the fact that other businesses were being conducted at the premises;

(b) that it could be argued that the second appellant remained in possession of the premises, even after physically vacating them, through his partner, the first appellant. He nevertheless concluded otherwise after analysing the evidence, *inter alia*, as aforesaid.

It was argued by his counsel that the second appellant claimed under cross-examination that he still had a desk at the premises and a key to the front door. Counsel relied on this claim to show that the second appellant retained his right to possession. Having regard to the total ignorance which he evinced of the actual operations of the business, as found by the District Judge, I am not impressed by the argument that because he made this claim he retained the "animus" necessary to possession and that he had not abandoned his statutory tenancy.

It must be remembered that the first appellant at first tried to make out that the second appellant did not move out of the premises but later reluctantly admitted that he stopped coming back to sleep there in 1973. He had earlier said that he was unable to remember when the second appellant moved out. The second appellant, however, made no bones of the fact that he left the premises in 1952 *i.e.* more than twenty years before the Writ! Since the first appellant moved into occupation of the premises as early as in 1950 (which he later changed to 1952) he should have known only too well when it was that he was left in sole physical occupation.

The retention, if true, of the desk and the key, after the second appellant left the premises in 1952, obviously appeared to have been done in furtherance of an impious hope on his part to utilise this fact as a means of substantiating the necessary "animus" at some future date, if and when the need should arise, as it did in fact arise when these proceedings were instituted.

In the circumstances, he did not remain in possession of the premises after 1966, as the District Judge found. Once he ceased to remain in possession, he ceased to remain a statutory tenant by reason of section 27(a) and section 28 of the Control of Rent Act had no application to his case for the reasons set out clearly by Thomson L.P. in *Tan Khio Soei & Anor.* v. *Ban Hin Lee Bank Ltd.*[1] at page 72. The material portions of these sections read: —

"27. The following persons are statutory tenants under this Ordinance, namely: —

(a) any tenant of premises who remains in possession thereof after the determination by any means of his tenancy and who cannot by reason of the provisions of this Ordinance be deprived of such possession by his landlord;

....

28. A statutory tenant shall hold the premises of the landlord upon the following terms and conditions, namely: —

....

(b) his tenancy shall be subject to be determined by such notice as would have been required by law to determine a monthly tenancy of the premises containing no express provision for determination."

The learned Lord President was sitting on an appeal against a judgment involving a statutory tenant of premises in Singapore in whose case the applicability of section 28 (formerly section 17) was considered. His Lordship reiterated what he had earlier stated in the case of *Ramasamy Pillai* v. *Meyappa Chettiar*[2] that there was no difference between a statutory tenant under our legislation and a statutory tenant under the English Rent Acts and went on to cite with approval the position of such a tenant as described by Bankes L.J in *Keeves* v. *Dean*[3] to the following effect: —

"His right is a purely personal one, and as such, unless the statute expressly authorises him to pass it on to another person, must cease the moment he parts with the possession or dies."

This "dictum" of Thomson L.P. was disputed but it has stood the test of time and is still being followed in Singapore and in Malaysia (see *e.g. United India Fire & General Insurance Co. Ltd.* v. *Jaffnese Co-operative Society Ltd.*).[4] Moreover, it had the concurrence of the remaining members of the Federal Court including our own Chief Justice.

Since the second appellant parted with possession in 1966 at least, I failed to see how he could possibly have remained a statutory tenant when these proceedings commenced in 1973. Counsel for the appellants submitted that it is only when such a statutory tenant dies that such a tenant ceases to have the protection of section 28. I could not accept this proposition. Moreover, the second appellant not only parted with possession but ceased altogether to remain in possession thereof.

I accordingly dismissed the appeal against the judgment of the District Judge with costs but allowed a stay pending further appeal.

Appeal dismissed.

Solicitors: *Murphy & Dunbar; Mallal & Namazie.*

IN *RE* AN APPLICATION BY N.H.E. NASSIM

[O.C.J. (Winslow J.) September 26, 1975]
[Singapore — Originating Motion No. 15 of 1975]

Administrative Law — Appointment of assessors for hearing of a land acquisition appeal — Objection to assessors — Application for two other assessors dismissed by Commissioner of Lands — Application for certiorari to quash decision of Commissioner of Lands and for prohibition — Whether real likelihood of bias — Land Acquisition Act (Cap. 272), s. 26.

Land Acquisition — Assessors — Panel of — Appointment of — Likelihood of bias.

In this case the Commissioner of Lands for the purpose of hearing an appeal before the Appeals Board (Land Acquisition) had selected Messrs. Goh Kee Song and Charlie Chi Swan Chiang to be assessors. The applicant objected to both as assessors and applied for the selection of two other assessors. The Commissioner of Lands heard the application and dismissed it. The applicant thereupon applied for an order of *certiorari* to quash the order of the Commissioner of Lands and for an order of prohibition prohibiting him from further proceeding in the appeal. The grounds of objection were (a) that the assessors selected did not possess adequate special knowledge or experience relating to the valuation of land and (b) in the case of Mr. Goh Kee Song that in view of his past and present affiliations with the Government, he would be biased.

Held: (1) the Land Acquisition Act does not require assessors to be specially qualified in any particular manner or respect and therefore the Commissioner of Lands was entitled to make his selection from the panel appointed by the Minister;

(2) there was not a shred of evidence to support the contention that merely by virtue of his previous appointments, there was a real likelihood of bias on the part of the Appeal Board as a result of Mr. Goh Kee Song being selected as an assessor from the panel appointed by the Minister;

(3) the Government was not a party before the appeal board and the fact that Mr. Goh Kee Song had been involved with the interests of the government, did not make him unfit to act as assessor in the appeal.

Cases referred to:-

(1) *R.* v. *Camborne Justices* [1955] 1 Q.B. 41.

(2) *Re Appointment of S.H.D. Elias* [1959] M.L.J. 92.

ORIGINATING MOTION.

K. E. Hilborne for the applicant.

Rajan Menon (State Counsel) for the Attorney-General.

Winslow J.: By a letter dated April 1, 1975, the applicant herein who was then the appellant in an appeal pending before the Appeals Board (Land Acquisition) was informed by the Registrar of that Board that the Commissioner thereof had pursuant to section 26 of the Land Acquisition Act (Cap. 272) selected Messrs. Goh Kee Song and Charlie Chi Swan Chiang to be assessors at the hearing thereof. On April 8 the applicant's solicitors replied stating their objections to both as assessors intimating that an application of an interlocutory nature would be made under Regulation 8 of the Land Acquisition (Appeals Board) Regulations, 1967 which was accordingly made on April 10 applying for the selection of two other assessors to be appointed in substitution for the assessors to whom objection had been taken.

The grounds of objection were stated to be —

"1. *As to Mr. Goh Kee Song and Mr. Charlie Chi Swan Chiang.*

It is understood that Mr. Goh Kee Song is a Public Accountant by profession and that he does not possess adequate special knowledge or experience relating to the valuation of land and/or the quarrying, sale or marketing of sand and it is respectfully suggested that he cannot be said therefore to be appropriately qualified to act as an assessor in these proceedings. It is understood that Mr. Charlie Chi was formerly a director of Eastern Realty Company Limited and other companies engaged in the sale purchase and development of immoveable property and as such would have been appropriately qualified to act as an assessor in so far as the valuation of land as such was concerned. However, it is understood that Mr. Charlie Chi Swan Chiang retired from business some years ago and is no longer actively and continuously concerned in such businesses.

2. *As to Mr. Goh Kee Song alone.*

It is understood that Mr. Goh Kee Song was Registrar of Vehicles at sometime and thereafter was Chairman of the Singapore Telephone Board for some years. It is submitted that it is inappropriate and contrary to the accepted principles of natural justice that an assessor with past or present affiliations with the Government of Singapore should participate in proceedings to which the Government itself is a party."

Pursuant to Regulation 8, the Attorney-General on behalf of the Collector of Land Revenue replied, as he was entitled to do, *inter alia*, as follows —

"(a) The Minister for Law and National Development in accordance with the powers conferred by sub-sections (2) and (4) of section 26 of the Land Acquisition Act appointed Mr. Charlie Chi Swan Chiang and Mr. Goh Kee Song as members of the Panel of Assessors to the Appeals Board for a further period of 2 years with effect from June 17, 1973 vide Gazette Notification No. 2161 dated July 13, 1973.

(b) The Commissioner of Appeals Board in accordance with section 26(1)(a) of the Land Acquisition Act (Chapter 272) duly selected Mr. Charlie Chi Swan Chiang and Mr. Goh Kee Song.

(c) The Grounds of the Application by the Appellant herein are without any legal basis."

The parties were heard on April 25 by the Commissioner, sitting alone, as was his practice on such applications at the end of which he communicated his reasons for dismissing the application in writing as follows: —

"This was an application by the appellant under Regulation 8(1) of the Land Acquisition (Appeals Board) Regulations 1967 objecting under Regulation 13(3) of the said Regulations to my selection of Mr. Goh Kee Song and Mr. Charlie Chi Swan Chiang from amongst the panel of assessors appointed under the provisions of subsection (2) of section 26 of the Act. The application was for the selection of two other assessors in substitution for the said two assessors already selected by me.